

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

MICHAEL McCOLE,
Petitioner,

vs.

04-cv-00261

PENNSYLVANIA BOARD OF
PROBATION AND PAROLE,
Respondent.

Chief Mag. Judge Baxter

**MOTION TO LET STAND FORMER AMENDMENT TO
PETITION FOR WRIT OF HABEAS CORPUS**

And Now Comes, pro-se Petitioner Michael McCole and in support of this motion respectfully avers.

1. On November 30, 2005, Chief Magistrate Judge Baxter granted per order Petitioner's formerly filed Motion for Extension of Time to File an Amendment to the Petition for Writ of Habeas Corpus.

2. Respondent was order that same date to file a reply due by February 1, 2006.

3. The subject of the Amendment to the Petition for Writ of Habeas Corpus was a due process issue.

4. The Order dated November 30, 2005, granting permission to file the amendment is unnecessary because an amendment to the habeas petition has already been filed and served and answered by Respondent.

5. The oversight was caused by Petitioner who did not notice that the previously filed Amendment completely covered the due process issue thereby negating a need to file an

additional Amendment that would essentially merely be a rehash of the Amendment already filed, served and answered by Respondent.

6. The Docket Report to this case shows that Petitioner filed the first Motion to Amend the Habeas Petition on July 28, 2005 (Docket Entry 15).

7. Docket Entry 16 shows that Petitioner submitted a Brief in Support of the Motion to Amend.

8. Docket Entry dated July 29, 2005 is an Order by Judge Susan Paradise Baxter granting the Motion to Amend.

9. The July 29, 2005 Order also directed the Clerk's Office to file the amendment to the Petition.

10. The July 29, 2005 Order also directed Respondent to file a response to the amendment on or before August 22, 2005.

11. Docket Entry 17 shows that Petitioner filed the Amendment to the Habeas Petition on August 2, 2005.

12. Docket Entry 18 shows that Respondents filed an Answer to the Amendment on August 18, 2005.

13. In essence, the due process issue that Petitioner wished to include for consideration has been filed, served and answered.

14. The due process issue is ripe for a decision from this Court.1/

Wherefore, Petitioner prays in relief that an Order (proposed Order attached hereto) be granted allowing the due process issue to be ruled upon pursuant to the Amendment already filed and Respondent's answer thereof.

Respectfully submitted,



Michael McCole
AS 0521
1111 Altamont Boulevard
Frackville, PA 17931

1/ Petitioner sincerely apologizes to the Court and the Respondent for the time and energy expended dealing with. However, with the Court recent grant of Petitioner's Motion to Address the impact of Richardson v. PBPP, (cite omitted), in lieu of Respondent's reply, if any, this entire habeas corpus action is mature for the Court's decision on the merits.

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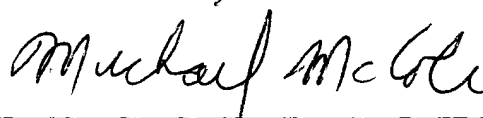
Chief Mag. Judge Baxter

PROOF OF SERVICE

I, the undersigned, hereby certify that a true and correct copy of the forgoing Motion to Let Stand Former Amendment to Petition For Writ of Habeas Corpus was served upon the following person and in the manner indicated below this 19th day of January, 2006.

SERVICE BY PREPAID FIRST CLASS U.S. MAIL ADDRESSED TO:

Rodney M. Torbic
Office of the Attorney General
564 Forbes Avenue
6th Floor, Manor Complex
Pittsburgh, PA 15219



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McCole v. PA Board of Probation and Parole 04-v-261

*Michael McCole
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*Office of the Clerk
Western District of PA
17 South Park Row
Erie, PA 16501*

Dear Clerk:

*Enclosed are legal documents for filing and forwarding
to Chief Mag. Judge Baxter; proof of service is attached to
rear of document.*

Thank you! I remain,

Very truly yours,

Michael McCole
Michael McCole